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COURT OF APPEAL-4TH DIST., DIV. 3
FILED

MAR 24 1998

Stephen M. Kelly, Clerk

Deputy Clerk

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN F. DEAN,

Petitioner,

v.

THE SUPERIOR COURT OF
ORANGE COUNTY,

Respondent;

ROSALYN LEVER et al.,

Real Parties in Interest.

G023111

(Super. Ct. No. 791765)

OPINION

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, John C. Woolley, Judge. Writ issued.

Darryl R. Wold and Reed & Davidson for Petitioner.

No appearance for Respondent.

Mark S. Rosen for Real Party in Interest Darrell Opp.

No appearance for Real Party in Interest Rosalyn Lever.

COPY EXHIBIT D

* * *

Petitioner, a candidate for local office, seeks extraordinary writ relief mandating the Registrar of Voters delete part of an opponent's candidate statement as an impermissible personal attack on petitioner. We issue relief and conclude the superior court erred in not ordering the deletion.

Darrell Opp seeks to unseat the incumbent petitioner, John Dean, as county superintendent of schools in the upcoming June 1998 election. Opp submitted a candidate statement to the Registrar of Voters which began with the following three paragraphs commenting on petitioner: "[¶] The incumbent, John Dean, is failing our schools, our children and the taxpayers. [¶] Under Dean's tenure \$250,000,000 (Two Hundred and Fifty Million!) was borrowed to gamble in the bankrupt Citron investment pool. Dean personally authorized this borrowing. He is one of the few remaining county officials who has not resigned or been removed from office for his role in this fiasco. [¶] Dean's 'leadership' over the last eight years resulted in massive increases in the size of the County bureaucracy. Elected on a platform to cut the county budget, instead his budget has increased from \$64 Million to over \$105 Million."¹

Dean challenged Opp's candidate statement by seeking a writ of mandate in the superior court pursuant to Elections Code section 13313.² That section authorizes the court to mandate amendment or deletion of material in the voter's pamphlet which is "false, misleading, or inconsistent with the requirements of this chapter;"

Dean sought relief on two grounds: (1) deletion of the first three paragraphs (quoted above) "because they consist entirely of material that is not permitted to be included in a candidate's statement" and (2) deletion of four false and misleading

¹ The statement continues with a recitation of Opp's background, his platform for the County Department of Education, and a list of individuals who have endorsed his candidacy.

² All further references are to the Elections Code unless otherwise noted.

sentences in the second and third paragraphs of the statement. The trial court denied the request to delete the first three paragraphs in their entirety, but did direct amendments to the second and third paragraphs.³ The only issue presented here is whether the lower court erred in refusing to delete the first three paragraphs in their entirety.

Section 13307 delineates the contents of a candidate's statement for local office, as well as the procedures for inclusion of such a statement in the voter's pamphlet. In pertinent part, the statute provides: "(a)(1) Each candidate for nonpartisan elective office in any local agency, including any city, county, city and county, or district, may prepare a candidate's statement on an appropriate form provided by the elections official. The statement may include the name, age and occupation of the candidate and a brief description, of no more than 200 words, of the candidate's education and qualifications expressed by the candidate himself or herself. However, the governing body of the local agency may authorize an increase in the limitations on words for the statement from 200 to 400 words. The statement shall not include the party affiliation of the candidate, nor membership or activity in partisan political organizations."

"[T]he interpretation and applicability of a statute is a question of law." (*City of Petaluma v. County of Sonoma* (1993) 12 Cal.App.4th 1239, 1244.) In reviewing petitioner's claim, we are guided by well settled rules of statutory interpretation. The most fundamental of these rules is that where the statute is clear, the "plain meaning" rule applies. The Legislature is presumed to have meant what it said, and the plain meaning of the language governs. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155.) "If the language is clear and unambiguous there

³ The court directed the second paragraph be amended to read: "During Dean's tenure \$250,000,000 (Two Hundred and Fifty Million!) was borrowed to invest in the risky Citron investment pool. Dean should have prevented this borrowing. He is one of the few remaining bankruptcy-era county officials who has not resigned or been removed from office." The court directed the third paragraph amended to read: "Dean's 'leadership' over the last eight years resulted in massive increases in the size of the County Department of Education bureaucracy. Elected on a platform to cut the Department's budget, instead his budget has increased from \$64 Million to over \$105 Million."

is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798.)

The language of section 13307 is unambiguous. "The statement may include the name, age and occupation of the candidate and a brief description . . . of the candidate's education and qualifications. . . ." As noted by the Supreme Court in *Clark v. Burleigh* (1992) 4 Cal.4th 474, "[t]he negative implication of this specific list, of course, is that the Legislature did not intend the statutory candidate's statement to contain any other material: *expressio unius est exclusio alterius*. (Citation omitted.)"⁴ (*Id.*, at p. 489, emphasis in original.)

Opp argues *Clark* is distinguishable because section 13308, which governs *judicial* elections, contains specific limitations prohibiting comments on another candidate's qualifications, character or activities. *Clark* first found the implied intent to limit the statement from the same words used in the statute we review here. The additional language specific to judicial elections demonstrates additional express intent. But express intent is unnecessary here under the maxim *expressio unius est exclusio alterius*. "The expression of some things in a statute necessarily means the exclusion of other things not expressed." (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852, citing *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391, fn. 13; see also *Lake v. Reed* (1997) 16 Cal.4th 448, 466-467.) Here, the statute expressly authorizes comment's on one's own qualifications, to the exclusion of comments on an opponent's qualifications.

We have received a reply from real party in interest Opp. Further proceedings would add nothing to our review. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) The relevant law and facts are entirely clear. (*Ng v.*

⁴ *Clark* interpreted sections 10012 and 10012.1, the predecessors to sections 13307 and 13308. (See Stats. 1994, ch. 920, § 2.) -

Superior Court (1992) 4 Cal.4th 29, 35.) Consequently, additional briefing and oral argument would serve no useful purpose. (*Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1222-1223.) Moreover, time is of the essence. (See Elec. Code, § 13314, subd. (a)(3).)

Let a peremptory writ of mandate issue directing the Registrar of Voters to delete the first three paragraphs of Opp's candidate statement from the voter's pamphlet and to print the Opp candidate statement in the voter's pamphlet without those three paragraphs. To prevent mootness and to prevent frustration of the relief granted, this court's decision shall be final upon filing of the opinion. (Cal. Rules of Court, rule 24(d).)

SILLS, P. J.

WE CONCUR:

WALLIN, J.

RYLAARSDAM, J.

11 MARK S. ROSEN (Bar No. 72431)
 12 Attorney at Law
 2 2700 N. Main Street
 3 Suite 630
 3 Santa Ana, CA 92705
 (714)972-8040

4 Attorney for Real Party in Interest
 5 Darrell Opp

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF ORANGE

11 JOHN DEAN,
 12 Petitioner,

13 v.

14 ROSALYN LEVER, Registrar of Voters,
 15 Respondent.

16 DARRELL OPP,
 17 Real Party in Interest.

) Case No. 791765
) (Assigned to Judge Woolley,
) Dept. 6)
) SUPPLEMENTAL
) PEREMPTORY WRIT OF MANDATE

DATE: March 26, 1998
 TIME: 1:30 p.m.
 DEPT: 6

19 TO RESPONDENT REGISTRAR OF VOTERS ROSALYN LEVER:

20 Pursuant to the order entered by this court in the above-
 21 captioned matter amending the judgment heretofore entered, you are
 22 hereby ordered to augment the candidate statement of Darrell Opp by
 23 printing the candidate statement attached hereto.
 24

25 ALAN SLATER

26 DATED:

MAR 26 1998

27 CLERK OF THE SUPERIOR COURT

by *K. Houton, Deputy*

28 K. HOUTON



*Hi issue writ
 Slater D6*

DARRELL OPP
CANDIDATE STATEMENT

variation # 6 March 26, 1998- 98 words in bold

~~I have the qualifications and credentials to restore a failing County Department of Education.~~

I am an educator and businessman with 28 years experience in the classroom and the boardroom. Currently, I am the Chief Education Officer for our county's Regional Occupation Program. My wife, Barbara, and I are raising a teenage son in our public schools. We know first hand the realities of the public school system.

My management philosophy is conservative. I will not support risky investments and I will demand full accountability from all employees and contractors to the Department of Education.

My education philosophy is also conservative. I believe in teaching the basics and increasing access to new technology, especially computer skills. Our public school's mission must be to provide our children with the skills they need to compete in the real world. That has been my job for the last 25 years.

My platform for the County Department of Education:

- * Reduce the size of the County Department by 10% annually for the next four years and return those funds to our local schools.
- * Support local control of schools
- * Increase fiscal accountability of the Department of Education
- * Replace Bilingual education and teach our children in English.

Hundreds of educational and civic leaders from throughout Orange County have endorsed my call for new leadership, including (partial listing due to space limitations):

- * US Congressman Ed Royce
- * Orange County Supervisors Jim Silva and Chuck Smith
- * Irvine School Boardmember Margie Wakeham
- * Anaheim Union High School District President Harold Martin
- * North Orange County Community College Board VP Leonard Lahtinen
- * Capistrano Unified Boardmember Marlene Draper
- * Garden Grove Boardmembers Lynn Hamtil & Ken Slimmer
- * Westminster Boardmember Michael Verrengia
- * Santa Ana Unified Boardmember Rob Balen
- * Former Boardmembers Tim Carlyle, LBUSD, Bud Henry, TUSD, Forrest Werner, Newport Mesa USD
- * Retired Superintendents Ed Dundon (Garden Grove) & John Nicoll (Newport)
- * Mission Viejo Mayor Susan Withrow & Councilmembers William Crayercraft, Tom Potocki, Larry Smith & Sherri Butterfield
- * Santa Ana Mayor ProTem Rob Richardson & Councilman Tom Lutz
- * Orange Mayor Joanne Coontz
- * Laguna Niguel Mayor ProTem Mark Goodman
- * Huntington Beach Mayor ProTem Peter Green & Councilman Tom Harmon
- * San Juan Capistrano Mayor David Sverdlin & Councilman Wyatt Hart
- * Stanton Councilmen Brian Donahue & Harry Dotson
- * Westminster Councilman Tony Lam
- * Garden Grove Mayor Bruce Broadwater & Councilman Mark Leyes
- * Tustin Mayor Jeff Thomas & Mayor ProTem Tracy Worley
- * State Assemblywoman Marilyn Brewer

I ask you to join me in the quest for excellence.

Please feel free to call me at 714-494-4382 or reach me on-line at oppded@Earthlink.net.

FILED

ORANGE COUNTY SUPERIOR COURT

MAR 26 1998

ALAN SLATER, Executive Officer/Clerk

By _____ DEPUTY

1 MARK S. ROSEN (Bar No. 72431)
 2 Attorney at Law
 2700 N. Main Street
 Suite 630
 3 Santa Ana, CA 92705
 (714)972-8040
 4 Attorney for Real Party in Interest
 5 Darrell Opp

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF ORANGE

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 11 JOHN DEAN,
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 18 Real Party in Interest.

) Case No. 791765
) (Assigned to Judge Woolley,
) Dept. 6)

) AMENDMENT TO JUDGMENT
) TO AUGMENT
) CANDIDATE STATEMENT

) DATE: March 26, 1998
) TIME: 1:30 p.m.
) DEPT: 6

19 Real Party in Interest Darrell Opp's ex parte application to
 20 modify candidate statement in light of an order of the Court of
 21 Appeal came on for hearing on March 26, 1998, in Department 6 of
 22 the above-entitled court, the Honorable John C. Woolley, Judge
 23 Presiding. Darryl R. Wold of Reed & Davidson appeared for
 24 Petitioner John F. Dean; Mark S. Rosen appeared for Real Party in
 25 Interest Darrell Opp; and Benjamin P. deMayo appeared for
 26 Respondent Rosalyn Lever, Registrar of Voters of the County of
 27 Orange. The court having considered the papers filed in this case,
 28

1 the opinion of the Court of Appeal filed March 24, 1998, and the
2 arguments of the parties,

3 IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

4 1. This matter shall be decided on an ex parte basis due to
5 the fact that the Registrar of Voters intends to commence
6 publication of the voters pamphlet tomorrow, March 27, 1998.

7 2. Good cause having been shown to amend the judgment of this
8 court because of the decision of the Court of Appeal, and within
9 the constraints of Elections Code §13307 as expressed by the Court
10 of Appeal, real party in interest Opp may augment his candidate
11 statement by adding text up to the 400 words permitted to him under
12 Elections Code §13307.

13 3. The candidate statement as augmented is attached hereto and
14 shall be printed as Opp's candidate statement by the Registrar of
15 Voters.

16
17 DATED: MAR 26 1998

JOHN C. WOOLLEY
THE HONORABLE JOHN C. WOOLLEY
Orange County Superior Court Judge

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CANDIDATE STATEMENT
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 15 Respondent.

16 DARRELL OPP,
 17 Real Party in Interest.

Case No. 791765
 (Assigned to Judge Woolley,
 Dept. 6)

PEREMPTORY WRIT OF MANDATE

DATE: March 20, 1998
 TIME: 2:00 p.m.
 DEPT: 6

18
 19 TO RESPONDENT REGISTRAR OF VOTERS ROSALYN LEVER:

20 Pursuant to the judgment entered by this court in the above-
 21 captioned matter, you are hereby ordered to make the following
 22 changes in the candidate statement of Darrell Opp:

23 a. The second paragraph shall be amended to read:

24 "During Dean's tenure \$250,000,000 (Two Hundred and Fifty
 25 Million!) was borrowed to invest in the risky Citron investment
 26 pool. Dean should have prevented this borrowing. He is one of the
 27 few remaining bankruptcy-era county officials who has not resigned
 28

1 IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

2 1. Petitioner's request for an order to delete in their
3 entirety the first three paragraphs of the candidate statement of
4 Darrell Opp is denied.

5 2. A peremptory writ of mandate shall issue under the seal of
6 this court ordering Respondent Rosalyn Lever, as Registrar of
7 Voters for the County of Orange, to make the following changes in
8 the candidate statement of Darrell Opp:

9 a. The second paragraph shall be amended to read:

10 "During Dean's tenure \$250,000,000 (Two Hundred and Fifty
11 Million!) was borrowed to invest in the risky Citron investment
12 pool. Dean should have prevented this borrowing. He is one of the
13 few remaining bankruptcy-era county officials who has not resigned
14 or been removed from office."

15 b. The third paragraph shall be amended to read:

16 "Dean's 'leadership' over the last eight years resulted in massive
17 increases in the size of the County Department of Education
18 bureaucracy. Elected on a platform to cut the Department's budget,
19 instead his budget has increased from \$64 Million to over \$105
20 Million."

21
22 DATED: MAR 23 1998

JOHN C. WOOLLEY

THE HONORABLE JOHN C. WOOLLEY
Orange County Superior Court Judge

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1 or been removed from office."

2 b. The third paragraph shall be amended to read:

3 "Dean's 'leadership' over the last eight years resulted in massive

4 increases in the size of the County Department of Education

5 bureaucracy. Elected on a platform to cut the Department's budget,

6 instead his budget has increased from \$64 Million to over \$105

7 Million."

ALAN SLATER, EXEC. OFFICER/CLERK

8
9 DATED: MAR 23 1998

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By *Jodi Gamboa*
DEPUTY CLERK OF THE SUPERIOR COURT
JODI GAMBOA

